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Attorneys for Official Committee of Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

**In re:**  
**USA Commercial Mortgage Company**  
**06-10725 – Lead Case**  
**USA Capital Realty Advisors, LLC**  
**06-10726**  
**USA Capital Diversified Trust Deed Fund,**  
**LLC**  
**06-10728**  
**USA Capital First Trust Deed Fund, LLC**  
**06-10728**  
**USA Securities, LLC**  
**06-10729**  
**Debtors.**

Jointly Administered

Chapter 11 Cases

Judge Linda B. Riegle Presiding

**RESPONSE TO SUPPLEMENT**  
**BRIEF AND REQUEST FOR**  
**RULING ON ISSUE OF LAW**

Date: July 25, 2006

Time: 9:30 a.m.

**Affecting:**

☒ All Cases

**or Only:**

☐ USA Commercial Mortgage Company

☐ USA Capital Realty Advisors, LLC

☐ USA Capital Diversified Trust Deed Fund, LLC

☐ USA Capital First Trust Deed Fund, LLC

The Official Unsecured Creditors' Committee for USA Commercial Mortgage Company (the "Committee") asks that the relief requested in the Supplemental Brief and Request for Ruling on Issue of Law (DE 820) filed by Mr. LePome on behalf of his clients be denied as a request for an advisory opinion. The issues posed in Mr. LePome's brief may arise in a variety of factual contexts, whether a suit against an overpaid direct lender,

1 a request for an offset of a post-petition payment by a borrower, or otherwise. They do not  
2 now arise in a specific factual context.

3 The Committee respectfully suggests that the controversy over these issues is, at  
4 this time, outside the jurisdiction of a federal court. The Ninth Circuit explained the  
5 jurisdictional principle:

6 The “basic rationale” of Article III ripeness doctrine “is to  
7 prevent the courts, through avoidance of premature  
8 adjudication, from entangling themselves in abstract  
9 disagreements.” *Abbott Labs. v. Gardner*, 387 U.S. 136, 148,  
10 87 S.Ct. 1507, 1515, 18 L.Ed.2d 681 (1967). Accordingly,  
11 “ripeness is peculiarly a question of timing,” *Regional Rail*  
12 *Reorganization Act Cases*, 419 U.S. 102, 140, 95 S.Ct. 335,  
13 357, 42 L.Ed.2d 320 (1974), and a federal court normally  
14 ought not resolve issues “involv[ing] ‘contingent future events  
15 that may not occur as anticipated, or indeed may not occur at  
16 all.’” *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S.  
17 568, 580-81, 105 S.Ct. 3325, 3333, 87 L.Ed.2d 409 (1985)  
18 (quoting 13A C. Wright, A. Miller, & E. Cooper, Federal  
19 Practice and Procedure § 3532 (1984)). In the absence of an  
20 immediate and certain injury to a party, a dispute has not  
21 “matured sufficiently to warrant judicial intervention.” See  
22 *Warth v. Seldin*, 422 U.S. 490, 499 n. 10, 95 S.Ct. 2197, 2205  
23 n. 10, 45 L.Ed.2d 343 (1975).<sup>1</sup>

24 Except for the narrow request to hold distributions until late July, Debtors have not  
25 sought relief from the direct lenders. By attacking the alternatives posed by Debtors,  
26 Mr. LePome’s brief seeks, in effect, a request for an advisory opinion.<sup>2</sup> There is no case  
or controversy, the facts have not been developed to indicate whether there is any  
justification for any of the potential arguments, and the Court simply lacks jurisdiction  
over these hypothetical disputes.<sup>3</sup>

The Committee requests that Mr. LePome’s request be denied and the issues of fact  
and law addressed as they arise within this Court’s jurisdiction.

<sup>1</sup> *Clinton v. Acequia, Inc.*, 94 F.3d 568, 572 (9<sup>th</sup> Cir. 1996).

<sup>2</sup> See *In re MacNeil*, 907 F.2d 903 (9<sup>th</sup> Cir. 1990) (bankruptcy court lacked jurisdiction to  
render advisory opinion of relative priority of superpriority claims).

<sup>3</sup> *In re Lowenschuss*, 170 F.3d 923, 932 (9<sup>th</sup> Cir. 1999) (issue that is contingent upon future  
events, here an appeal, is not ripe for decision); *Acequia*, 94 F.3d at 572 (whether one  
party would breach a contract in the future or not was not a ripe issue, thus outside the  
jurisdiction of federal courts).

**LEWIS**  
AND  
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LLP  
LAWYERS

Dated July 13, 2006.

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By /s/ RC (#006593)

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